

*February 17, 2014*

*Comments of NC Rural Water Association to Environmental Review Commission, presented  
by Jon Carr, lobbyist*

1. Overview of NCRWA

- NCRWA Membership contains greater than 90% of the Local Government-owned water and wastewater utilities in the State
- This includes 343 Municipalities, 55 County-owned Systems, and 19 Sanitary Districts
- These systems rely heavily upon ordinances to protect, regulate, and operate water supply and distribution systems and wastewater collection, treatment and disposal systems, and to protect the public's health, safety and welfare
- Ratified House Bill 74 references the following environmental agencies in restricting local government ordinances, all of which impact water and wastewater systems: The Commission for Public Health (Articles 10 and 11 regulate drinking water and wastewater systems); and Department of Environment and Natural Resources (DENR) and Environmental Management Commission (EMC)

2. NCRWA's members use ordinances to regulate the following subject matters:

Water Supply

- Water quality – ordinances are necessary to ensure that water systems are in compliance with state and federal permits
- Drought/Water Shortage Plans
- Requirement for Backflow (single pipe) and Cross Connection (joinder of pipes) devices to prevent contaminants from entering the water system

- Buffers to protect water supplies
- Water system construction materials and standards
- Requirements for connections with the water system

#### Wastewater

- Regulating the use of sewer systems, including prohibitions on fats, oils, and grease from entering sewer systems
- Requiring pretreatment of industrial waste prior to entering sewer systems
- Backflow and Cross Connection devices
- Regulation of the acceptance of septic waste into public sewer systems
- Wastewater system construction material and standards
- Reclaimed/reuse water
- Requirements for connections with the sewer system

The current system allows for more adaptive control of local issues than a “one glove fits every hand” philosophy as environmental issues are often very specific to the locality, water supply characteristics, available infrastructure, and treatment technology and capacities.

### 3. Current law already addresses limitations on ordinances.

At least as to cities, there are already limits on general ordinance-making powers (GS § 160A-174):

- A city ordinance shall be consistent with the Constitution and laws of North Carolina and of the United States. An ordinance is not consistent with State or federal law when: (1) The ordinance infringes a liberty guaranteed to the people by the State or federal Constitution; (2) The ordinance makes unlawful an act, omission or condition which is expressly made lawful by State or federal law; (3) The ordinance makes lawful an act, omission, or condition which is expressly

made unlawful by State or federal law; (4) The ordinance purports to regulate a subject that cities are expressly forbidden to regulate by State or federal law; and (5) The ordinance purports to regulate a field for which a State or federal statute clearly shows a legislative intent to provide a complete and integrated regulatory scheme to the exclusion of local regulation;

- The fact that a State or federal law, standing alone, makes a given act, omission, or condition unlawful shall not preclude city ordinances requiring a higher standard of conduct or condition.

4. Impact of further restrictions on ordinances.

- State would need to expand the details of existing laws and create new laws to allow local utilities to protect the public and environmental health while complying with federal regulations.
- Local governments would be required to have customer agreements/contracts to govern the relationship between the utility and the customer

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